REMARKS

Applicants' undersigned attorney thanks the Examiner for her comments. Applicants respectfully request reconsideration of this patent application, particularly in view of the above Amendment and the following remarks. Currently, Claims 1, 2, 4, 6, 9-12, 14-20, 26-33, 35-43, 57, 58, 60-65, 68-70, 72-77, and 80 are pending, with Claims 1, 2, 4, 6, 9-12, 14-20, 27-33, and 35-42 withdrawn from consideration.

Amendment to the Claims

Claims 26, 43, 57, 58, 60-65, 68-70, 72-77, and 80 have been examined with no claims being allowed. Claims 26 and 43 have been amended herein to include the limitations of Claims 64 and 80, respectively. Thus, Applicants respectfully request cancellation of Claims 64 and 80. No new matter has been added by this Amendment.

No additional fee is due for this Amendment because the number of independent claims remains unchanged and the total number of claims has been reduced.

Claim Rejections - 35 U.S.C. §102

The rejection of Claims 26, 43, 57-58, 60-63, 70, and 72-77 under 35 U.S.C. §102(b) as being anticipated by Everett et al. (PCT Publication No. WO 99/17695, hereinafter "Everett") is respectfully traversed, particularly in view of the above Amendment and the following remarks.

Everett discloses a multi-layer absorbent core. An upper layer 48 and a lower layer 50 may each include pulp fluff and superabsorbent material.

For a reference to anticipate a claim, the reference must disclose each and every element or limitation of the claim. Everett does not disclose each and every element or limitation of Applicants' independent Claims 26 or 43. Applicants' invention as recited in independent Claims 26 and 43 requires a drum-formed upper layer in combination with an air-laid lower layer. Additionally, Claim 26 requires the upper layer to have a surface area greater than a surface area of the lower layer, and

Claim 43 requires the lower layer to be discontinuous and placed in desired locations of the absorbent assembly.

The Examiner states that the limitations of the upper layer being drum-formed and the lower layer being air-laid are directed to a process of making the article, and further states that both the prior art and the claimed invention end up containing a bonded material and a cohesive layer, as described in Applicants' definitions of air-laid and drum-formed webs, respectively. However, Everett fails to disclose an air-laid material in the lower layer, as recited in Applicants' Claims 26 and 43. Instead, Everett discloses air-laid materials and other bonded materials as suitable in the ***upper*** layer region 48 (page 31, line 11 – page 32, line 18).

Furthermore, Applicants maintain that a person skilled in the art can visually and/or tactically identify drum-formed materials subsequent to the manufacturing process because drum-formed materials have distinctive properties distinguishable from other materials, particularly since drum-formed materials are formed in an online process that is an integral part of a consumer product converting operation. Thus, drum-formed materials are ***not*** the same as or obvious from other types of materials made according to other methods.

The combination of a high-density air-laid lower layer and a drum-formed upper layer allows a soft and flexible absorbent material to achieve conformability and comfort while reducing bulk and maintaining intake capability with the full absorbent capacity required of the absorbent product, as explained at page 28, lines 13-16, of the present application. Instead of combining a drum-formed upper layer and an air-laid lower layer, Everett relies on modifications to the physical and/or chemical composition of the component materials or modifications to the physical configurations of the components to provide improved performance (page 8, lines 5-7).

Additionally, Everett fails to disclose the upper layer having a surface area greater than a surface area of the lower layer, as recited in Applicants' Claim 26. To the contrary, Everett discloses the lower layer having a surface area greater than the upper layer (Page 28, lines 30-34). Everett also fails to disclose a discontinuous lower layer, as recited in Applicants' Claim 43.

For at least the reasons presented above, Applicants respectfully submit that Claims 26 and 43 are not anticipated by Everett. Because Claims 57-58 and 60-63 depend from Claim 26, and Claims 70 and 72-77 depend from Claim 43, these claims are also not anticipated by Everett. Thus, Applicants respectfully request withdrawal of this rejection.

Claim Rejections - 35 U.S.C. §103

A. Everett in view of Weisman

The rejection of Claim 64 under 35 U.S.C. §103(a) as being unpatentable over Everett in view of Weisman et al. (U.S. Patent No. 4,673,402, hereinafter "Weisman") is respectfully traversed.

The limitations of Claim 64 have been incorporated into independent Claim 26. Therefore, Claim 26 is now equivalent to the independent form of Claim 64.

As explained above, Everett fails to disclose or suggest an absorbent material having a drum-formed upper layer in combination with an air-laid lower layer. As pointed out by the Examiner, Everett also fails to disclose or suggest an upper layer having a bottom surface area that is greater than a surface area of a top surface of a lower layer.

Everett discloses between 20 and 75 wt% superabsorbent material in the upper layer, between 20 and 50 wt% superabsorbent material in the lower layer, and the upper layer is either the same size or ***smaller*** than the lower layer. In contrast, Weisman discloses a dual-layered absorbent core in which the upper layer is either the same size or ***larger*** than the lower layer. The upper layer includes up to 8 wt% hydrogel (superabsorbent) material, whereas the lower layer includes between 9 and 60 wt% hydrogel (superabsorbent) material.

To establish a prima facie case of obviousness, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Because these two references disclose opposite size configurations, these references teach away from the combination thereof. That is,

Everett discloses an upper layer having a greater amount of superabsorbent material and a smaller surface area than a lower layer, whereas Weisman discloses just the opposite, namely a lower layer having a greater amount of superabsorbent material and a smaller surface area than an upper layer. There is no motivation to reverse the dimensions of the layers in Everett, as suggested by the Examiner. In fact, Weisman reinforces the same correlation between superabsorbent content and size of the layer as present in Everett. Thus, it would be completely illogical to reverse the layer dimensions in Everett based on Weisman, since Weisman clearly discloses the layer having a greater amount of superabsorbent material as having smaller dimensions than the other layer.

For at least the reasons given above, Applicants respectfully submit that the teachings of Everett in view of Weisman fail to disclose or suggest Applicants' claimed invention. Accordingly, reconsideration and withdrawal of this rejection is respectfully requested.

B. Everett in view of Burgeni

The rejection of Claims 65 and 80 under 35 U.S.C. §103(a) as being unpatentable over Everett in view of Burgeni (U.S. Patent No. 3,494,362) is respectfully traversed.

The limitations of Claim 80 have been incorporated into independent Claim 43. Therefore, Claim 43 is now equivalent to the independent form of Claim 80.

As explained above, Everett fails to disclose or suggest an absorbent material having a drum-formed upper layer in combination with an air-laid lower layer. Burgeni also fails to disclose or suggest a drum-formed upper layer in combination with an air-laid lower layer. Instead, Burgeni discloses an absorbent pad having a corrugated insert.

Since neither Everett nor Burgeni discloses or suggests a drum-formed upper layer in combination with an air-laid lower layer, there is no suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify these references or to combine

reference teachings to achieve an absorbent material that includes a drum-formed upper layer in combination with an air-laid lower layer.

Another requirement for establishing a prima facie case of obviousness is that the prior art references, when combined, must teach or suggest all the claim limitations. Since neither Everett nor Burgeni discloses or suggests a drum-formed upper layer in combination with an air-laid lower layer, the combination of Everett and Burgeni also fails to disclose or suggest a drum-formed upper layer in combination with an air-laid lower layer.

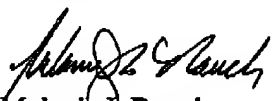
For at least the reasons given above, Applicants respectfully submit that the teachings of Everett in view of Burgeni fail to disclose or suggest Applicants' claimed invention. Accordingly, reconsideration and withdrawal of this rejection is respectfully requested.

Conclusion

Applicants intend to be fully responsive to the outstanding Office Action. If the Examiner detects any issue which the Examiner believes Applicants have not addressed in this response, Applicants' undersigned attorney requests a telephone interview with the Examiner.

Applicants sincerely believe that this Patent Application is now in condition for allowance and, thus, respectfully request early allowance.

Respectfully submitted,



Melanie L. Rauch
Registration No. 40,924

Pauley Petersen & Erickson
2800 West Higgins Road, Suite 365
Hoffman Estates, Illinois 60195
(847) 490-1400
FAX (847) 490-1403